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Nos. 92-1392 and 92-1395

In the Supreme Court of the United States

OCTOBER TERM, 1993

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

DANIEL J. SCHOOLCRAFT, ET AL.

WALTER ROERS, DIRECTOR OF MINNESOTA DISABILITY DETERMINATION SERVICES, ET AL., PETITIONERS

v.

DANIEL J. SCHOOLCRAFT, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT MOTION TO GRANT THE PETITIONS FOR A WRIT OF CERTIORARI, VACATE THE JUDGMENT OF THE COURT OF APPEALS, AND REMAND WITH DIRECTIONS TO VACATE THE JUDGMENT OF THE DISTRICT COURT AND TO REMAND THE CASE TO THE DISTRICT COURT FOR CONSIDERATION OF THE PARTIES' SETTLEMENT AGREEMENT

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On November 1, 1993, the parties jointly moved this Court to defer consideration of the petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this

case until January 7, 1994. In that motion, the parties explained that they were engaged in negotiations to settle this action, that they hoped to conclude a settlement agreement within 60 days, and that the proposed agreement then under discussion would provide for a joint proposal for the disposition of the certiorari petitions. This Court granted the motion on November 8, 1993. 114 S. Ct. 434.* The parties have now arrived at the anticipated settlement, which is set forth in the stipulation and attachments thereto. We have lodged 10 copies of the stipulation and attachments with the Clerk of this Court. By this present motion, the parties jointly move the Court to grant the petitions for a writ of certiorari, vacate the judgment of the court of appeals, and remand the case to the court of appeals with directions to vacate the judgment of the district court and to remand the case to the district court for consideration of the settlement.

1. In this putative class action, respondents challenge the manner in which the Minnesota Disability Determination Services (DDS), on behalf of the Secretary of Health and Human Services, evaluates claims for disability benefits under Title II and Title XVI of the Social Security Act based in whole or in part on allegations of alcoholism or drug addiction. The Eighth Circuit relied on *Bowen* v. *City of New York*, 476 U.S. 467 (1986), to hold that respondents were not required to exhaust their administrative remedies before obtaining judicial review in an action

* Previously, on October 4, 1993, this Court had granted a prior motion by the parties to defer consideration of the certiorari petitions until November 5, 1993. See 114 S. Ct. 48, 49.

against the Secretary under 42 U.S.C. 405(g). The Eighth Circuit further held that 42 U.S.C. 1983 provides respondents with a separate cause of action directly against the heads of Minnesota DDS and its parent agency. In separate petitions filed on or about February 22, 1993, the Secretary and the state petitioners sought review of both holdings.

2. The parties have now entered into an agreement to settle this case. Briefly, the agreement provides for: (1) the issuance by the Secretary of a circular to Minnesota DDS to clarify the method for evaluation of claims for disability benefits under Title II or Title XVI of the Social Security Act based in whole or in part on allegations of substance addiction disorders; (2) review by Minnesota DDS, under the circular, of prior initial and reconsideration determinations denying or terminating disability benefits based on allegations of substance addiction disorders, but only for individuals who, within a one-year period, file new claims for benefits based on a substance addiction disorder and are found disabled; and (3) poster notice of the availability of the review. The agreement also provides for the submission of this joint motion by the parties. The agreement further provides that, if this Court grants the instant motion, the parties will, following remand of the case to the district court, jointly submit the agreement to the district court and move for entry of a judgment dismissing the action in accordance with the agreement. The agreement is conditioned upon vacatur of the decisions of the court of appeals (971 F.2d 81) and the district court (753 F. Supp. 1478).

3. The disposition of the pending certiorari petitions proposed by this joint motion is consistent with

this Court's disposition of similar motions under similar circumstances. See *Continental Casualty Co.* v. *Fibreboard Corp.*, 113 S. Ct. 399 (1992); *City Gas Co.* v. *Consolidated Gas Co.*, 111 S. Ct. 1300 (1991); *Lake Coal Co.* v. *Roberts & Schaefer Co.*, 474 U.S. 120 (1985) (per curiam); *J. Aron & Co.* v. *Mississippi Shipping Co.*, 361 U.S. 115 (1959) (per curiam); *Black* v. *Amen*, 355 U.S. 600 (1958) (per curiam).

4. If this Court denies this motion, petitioners urge the Court to grant the petitions for a writ of certiorari for the reasons stated in the petitions, and respondents urge the Court to deny the petitions for the reasons stated in the brief in opposition they filed on July 15, 1993.

Respectfully submitted.

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